IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ARTHUR L. VAN, an individual, Plaintiff, v. COVANTA WBH, LLC, a foreign limited liability company & COVANTA TULSA, INC., a domestic for profit business corporation & COVANTA PROJECTS, INC., & QUEST ELEVATOR INCORPORATED, a domestic for profit corporation, Defendants.	)	Case No.: 4:11-cv-00355-CVE-TLW

DEFENDANTS, COVANTA WBH, LLC AND COVANTA PROJECTS, INC.'S MOTION TO DISMISS AND ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT

COMES now the Defendants, Covanta WBH, LLC and Covanta Projects, Inc. ("Covanta Defendants") and request this Court to dismiss this action due to lack of jurisdiction, or in the alternative, Covanta Defendants hereby respond to the allegations contained in Plaintiff's First Amended Complaint as follows:

JURISDICTION AND VENUE

Covanta Defendants state that Plaintiff alleges in his First Amended Complaint that the newly added Defendant, Quest Elevator Incorporated, is an Oklahoma corporation with its principal place of business in Oklahoma, and thus, is a citizen of Oklahoma. Upon information and belief, Plaintiff Arthur L. Van is a resident and citizen of Oklahoma. Pursuant to 28 U.S.C. § 1332, diversity jurisdiction is now destroyed, and Covanta Defendants ask this Court to dismiss this action.

STATEMENT OF FACTS SUPPORTING PLAINTIFF'S CLAIMS

1. Covanta Defendants admit that an incident with Plaintiff occurred on Defendants' premises on February 15, 2010. Covanta Defendants deny the remaining allegations contained in Paragraph No. 1 of Plaintiff's First Amended Complaint.

2. Covanta Defendants deny the allegations contained in Paragraph No. 2 of Plaintiff's First Amended Complaint.

3. Covanta Defendants deny the allegations contained in Paragraph No. 3 of Plaintiff's First Amended Complaint.

4. Covanta Defendants admit the allegations contained in Paragraph No. 4 of Plaintiff's Amended Complaint.

5. Covanta Defendants are without sufficient information to either admit or deny the allegations contained in Paragraph No. 5 of Plaintiff's First Amended Complaint, and therefore deny the same.

6. Covanta Defendants deny the allegations contained in Paragraph No. 6 of Plaintiff's First Amended Complaint.

DAMAGES

Covanta Defendants deny the allegations contained in this section of Plaintiff's First Amended Complaint.

AFFIRMATIVE DEFENSES

1. Any negligence on the part of Covanta Defendants, which is specifically denied, was outweighed by Plaintiff's own negligence and, therefore, Plaintiff is barred from any recovery in this action.

2. Any injuries or damages were caused by the acts or omissions of third parties

over whom Covanta Defendants had no control and, therefore, Plaintiff is barred from any recovery in this action from Covanta Projects.

3. Covanta Defendants deny an unreasonably, dangerous hazard existed, and that Covanta Projects failed to warn of the same.

4. In the alternative, Covanta Defendants allege that any defect or defective condition which may be determined to have existed was known, open and obvious so as to relieve Covanta Defendants of any duty to Plaintiff.

5. Covanta Defendants deny that it had notice of, or should have had notice of, the specific hazard alleged by Plaintiff.

6. Plaintiff's First Amended Complaint fails to state a claim upon which relief can be granted.

7. Plaintiff's claims are barred by the doctrine of Secondary Liability and lack of subject matter jurisdiction under the Workers Compensation Act.

8. Plaintiff failed to mitigate his damages.

9. Plaintiff's First Amended Complaint fails to state a cause of action for punitive damages.

10. Plaintiff's First Amended Complaint fails to state a cause of action for attorneys' fees.

11. Covanta Defendants reserves the right to amend or modify this Answer during the course of discovery.

WHEREFORE, premises considered, Defendants Covanta WBH, LLC and Covanta Projects, Inc., hereby moves this Court for dismissal of the action, and for any and all other relief that this Court deems just and equitable.

Dated: September 15, 2011.

Respectfully submitted,

By /s/ John H. Tucker

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CERTIFICATE OF SERVICE

I certify that on the 15th day of September, 2011, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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/s/ John H. Tucker